

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 15,696
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Appeal of)	
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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare finding that he was overpaid benefits for June and July of 1998 due to his failure to report household income.

FINDINGS OF FACT

1. The petitioner is a thirty-six-year-old father of three who usually works as a long distance truck driver but who became unable to work due to medical problems in May of 1998. He lives with his children and his ex-wife who is employed and earns \$1,313.65 per month.

2. The petitioner decided to apply for ANFC benefits for himself and his children. At his request, his ex-wife filled out the written application which he signed on June 14, 1998. The application, which was subsequently submitted to the Department, required the petitioner to list everyone in his household, even those "who are not asking for assistance." The petitioner did list his ex-wife pursuant to that request and checked a box after her name, which indicated that she was seeking ANFC assistance. In response to the question, "[d]oes anyone who wants assistance have income from a job?", the petitioner answered "No."

3. On June 30, 1998, the petitioner appeared for an interview at the DSW office at which time an eligibility specialist went over his application. At that time, the petitioner told her that he was not applying for assistance for his ex-wife, just for himself and his children. The specialist explained to the petitioner that his ex-wife would have to be included in the ANFC calculations because they lived in the same household and had children in common.

4. The specialist recalls that pursuant to her practice, she went over all of the questions on the application during the interview, including the one which requested information on employment. She testified that nothing was on the application and nothing was said to her which would have indicated that the petitioner's ex-wife was employed. The petitioner recalls the interview differently, testifying that he did say that his ex-wife was employed.

5. At the conclusion of the interview, the specialist asked the petitioner to bring in certain verifications of disability and expenses and also to return a "Reach Up Referral Form" form for his ex-wife. This form advised the petitioner's ex-wife that she was not required to participate in "Reach Up" but could volunteer. The form also explained that the purpose of the program was to help ANFC recipients to become "either partially or completely self-supporting through employment or self-employment." This information was also requested in writing in a notice

dated June 30, 1998. A second notice was also mailed that same day to the petitioner asking him to return a "Reach-Up Referral" form for his oldest daughter who, though sixteen-years-old, was no longer in high school, a fact which the worker had missed until she reviewed the application following the interview. The petitioner was informed that his daughter was a mandatory "Reach-Up" participant.

6. Because the specialist did not need any of the verifications to determine the amount of the ANFC grant, she approved it prospectively and notified the petitioner by notice dated July 1, 1998 that he was eligible for ANFC-Incapacity benefits of \$779 per month based on no countable family income. All of the verifications were returned promptly including both of the Reach Up forms for mother and daughter.

7. On July 8, 1998, the petitioner's ex-wife called in from work to report that her now seventeen-year-old daughter was about to enroll in college and asked for an exemption from Reach-Up. She also told the worker she was surprised that the ANFC check was so large and wanted to make sure the Department had all the information from her work. The petitioner's ex-wife testified that when she told the worker where she worked she said, "it rang a bell." The worker, who kept a written log note of the conversation, denies making any such statement and testified that this was the first time she had heard anything about the ex-wife's

employment. She took information over the phone on her income and recalculated the family's eligibility.

8. On July 9, 1998, the specialist mailed the petitioner a notice telling him that he was no longer eligible for ANFC due to his ex-wife's income and advising him that his benefits would stop on August 1, 1998. The petitioner was due to receive another check in mid-July which the specialist could not stop. She instructed the petitioner to return that check. The specialist acknowledged that she could not actually require the petitioner to return the check. She asked him to do so because she felt frustrated that she had quickly approved the application and payment even before verifications came in based on the impression the petitioner had given her that the entire assistance group had been without income since May.

9. The petitioner did not return the check. On September 29, 1998, the Department mailed the petitioner a letter stating that he had been overpaid \$802.00 due to a client error of unreported income and that federal law required repayment. The petitioner appealed that determination.

10. The petitioner agrees that he received \$802 in ANFC benefits to which he was not entitled (\$23 for June and \$779 in July). However, he believes the overpayment should not be recovered because he reported his ex-wife's income

and that the Department made the mistake of not including it when he was paid. His ex-wife explained that she did not report her income when she filled out the written application because she was not asking for assistance. (She was not asked to explain the discrepancy between that statement and her written assertion that she was seeking assistance at the beginning of the application.) The petitioner continues to maintain that he did mention her income during the interview.

11. The Department makes no claim in this matter that the petitioner intentionally failed to report income. Rather, it claims that the petitioner mistakenly failed to report his ex-wife's income, resulting in an overpayment which it is required to establish and recover.

12. There clearly was confusion in this matter which led to an eligibility mistake. The evidence makes it more likely that the confusion was on the part of the petitioner who was a first time applicant attending an interview alone and answering questions about a form filled out by his ex-wife. There is no reason to suppose that the worker did not do her best to elicit the appropriate information on household income, an essential piece of information in determining eligibility, and that she would have followed up on any hint of other income made at the interview. Instead, her action of immediately approving the application following the interview (without waiting for verifications)

indicated that she had been left with the strong impression that the family had no income and was in a desperate financial situation. It must be concluded that the petitioner inadvertently failed to inform the specialist of his ex-wife's income either in the written application or at the subsequent interview and his recollections to the contrary cannot be credited.

ORDER

The Department's decision establishing an \$802 overpayment due to client error is affirmed.

REASONS

The Department's ANFC regulations provide that:

Overpayments of assistance, whether resulting from administrative error, client error or payments made pending a fair hearing which is subsequently determined in favor of the Department, shall be subject to recoupment. Recovery of an overpayment can be made through repayments by the recipient of the overpayment, or by reducing the amount of payment being received by the ANFC group of which he is a member.

. . . Any overpayments of \$35.00 or more should be recovered from individuals no longer eligible for ANFC.

W.A.M. 2234.2

The petitioner does not dispute that he got \$802 in ANFC payments to which he was not entitled. That being the case, the regulation requires recovery of the amounts paid in error regardless of who was the cause of the error. The source of the error is only significant in determining how

much could be recouped from the ANFC grant each month. If the Department was in error, it is 5% of the grant. If the client was in error, as is the case here, it is 10% of the grant. W.A.M. 2234.2.

The petitioner is not currently on ANFC. The Department represented at hearing that it typically negotiates repayments with former recipients on a case by case basis and may intercept tax returns to repay any outstanding amounts. The petitioner is advised to discuss a method of repayment with the Department and to obtain the advice of an attorney before making any agreement to make payments.

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